

DATE: March 26, 1998

TO : Victoria E. Aguayo, Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Service Employees International Union, Local 1877
(Fedco, Inc.)
Case 21-CC-3259

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This case was submitted for advice as to whether the Union's picketing at entrances to stores where janitorial contractors, the primary employers, performed services was privileged common situs picketing or an unlawful attempt to pressure the neutral store owner to alter its business relationships.

FACTS

Fedco is a retail store chain with several facilities in the Los Angeles area. Before the events at issue herein, Fedco subcontracted its janitorial services at its Pasadena and La Cienega stores to ISS and Network, respectively. Both ISS and Network were signatories to contracts with Service Employees Union Local 1877 (the Union).

In late 1997, [\[1\]](#) Fedco decided to cancel those janitorial subcontracts and to subcontract the janitorial services for all of its stores to Union Building Maintenance (UBM), a Teamsters signatory. Fedco notified ISS and Network that UBM would begin serving the Pasadena store on November 19 and the La Cienega store on December 1.

Shortly after the contractors were notified of the cancellations, Union President Mike Garcia sent a letter to Fedco President Bob Stevenish wherein he stated that the cancellations were "totally unacceptable" to the Union, and that the Union intended to do "everything within our collective ability" to "combat" that decision. The letter directed Stevenish's attention to enclosures which "exemplify what I am expressing," and which included newspaper articles describing Union picketing at other job sites in Los Angeles. Shortly thereafter, Union official John Barton telephoned Fedco Vice President of Human Resources R.G. Biggs and reiterated that the Union would "take action" unless Fedco agreed to continue subcontracting with the SEIU signatories.

At around the same time, the Union posted flyers on the Fedco employee bulletin boards at the Pasadena and La Cienega stores which described the dispute with Fedco, posed the question "could your own jobs be next?," and requested that Fedco employees "join us for two days of action. Stand up, speak up, and save union jobs

in the market industry."^[2]

On November 7, while Network was still performing janitorial services at the La Cienega store, the Union picketed there with signs that stated "UNFAIR Network -- SEIU Local 1877 AFL-CIO -- No Dispute with Any Other Employer -- No Request to Cease Deliveries or Stop Performing Services." The picketers also distributed handbills, entitled "CUSTOMER ALERT! VIOLATIONS AT FEDCO," which depicted a thief in striped shirt wearing a mask, and which stated in pertinent part:

According to a legally binding union agreement between janitors and their employer Network, janitors who clean Fedco stores are being shortchanged thousands of dollars in unpaid wages. Network, the company hired by Fedco to clean their stores, has simply chosen to keep the money.

It's outright robbery. These are hardworking men and women with families to support. For many of them, even an extra dollar in their paycheck makes a big difference. So why is Network going back on their word? Why are they ignoring a legal contract they already signed and agreed to honor? Maybe its because Network has been feeling pressure from Fedco to cut costs. After all, Fedco just announced that they're ending their cleaning contract with Network and hiring a cheaper, poverty wage company to clean their stores.

But why should janitors pay the price? Network is going much too far to save money. They're not only violating a legal agreement, they're taking money out of the pockets of hard working families.

WHAT CAN YOU DO? Call Fedco President Bob Stevenish . . . or fax him . . . Tell him to stop cutting costs at Fedco at the expense of working families.

No request made to cease services or halt deliveries. No dispute with any other employer.

(emphasis added.) On November 8, while ISS was still performing services at the Pasadena store, the Union picketed there with signs stating "UNFAIR ISS" and handbills identical to those distributed at the La Cienega store except that all references to "Network" were replaced with references to "ISS."^[3]

On November 24, the Union distributed handbills at the Pasadena store which stated:

Fedco Destroys the Holidays for Working Families

The timing couldn't be worse. Fedco thinks paying workers living wages and family health benefits cuts too much into their profits. So just days before Thanksgiving, Fedco is dumping unionized janitorial companies which employ over 140 janitors.

Fedco is canceling its contracts with union cleaning firms and hiring a cheaper janitorial company that pays poverty wages and offers no benefits of any kind. Thanks to Fedco's heartless decision, Union janitors who've cleaned Fedco stores for years will be left out in the cold. And the holidays will be destroyed for hundreds of working families.

Where's Fedco's sense of community responsibility? Where's their holiday spirit? While Fedco stuffs itself with big holiday sales -- janitors and their children are facing empty holiday tables this year.

What Can You Do?

Call Fedco President Bob Stevenich . . . or fax him . . . Tell him to have heart --don't leave janitors out in the cold this holiday season. No request made to cease services or halt deliveries.

(emphasis added.) The Union distributed a similar flyer at the Pasadena store on December 1.^[4]

On December 4, after UBM had taken over the janitorial subcontracts, the Union picketed at the Pasadena store with signs that stated "UNFAIR -- UBM -- SEIU Local 1877 AFL-CIO -- No Dispute With Any Other Employer -- No Request to Cease Deliveries or Stop Performing Services." The picketers also handed out flyers substantially similar to those distributed on November 24 and December 1, except that most of the references to Fedco were substituted with references to UBM, which the Union accused of "heartlessly decid[ing] not to hire long term employees" who had cleaned Fedco's stores, and the Union directed customers to call UBM's owner, not Fedco's, and tell him "Don't leave janitors out in the cold for the holidays."

On December 19, the Union issued a press release announcing that, later that day, over 100 janitors and supporters would picket at the La Cienega store to protest the mass termination of Fedco janitors that came about "after Fedco ended their contract with union cleaning companies." The press release further stated that janitors would have "empty pockets for Christmas," while Fedco "reaped big profits from this season's holiday sales," and that "Fedco's move to end their relationship with union cleaning companies is especially heartless this time of year." Later that day, the Union picketed the La Cienega store with signs that stated: "UNFAIR -- UBM," but distributed flyers that referred to Fedco's replacement of janitors earning a living wage with workers "employed by UBM -- a non-union company that doesn't pay enough to stay above the poverty line" and asserted that "there's a real Scrooge running around at Fedco Stores." When a mass of pickets surrounded the front door, Fedco managers called the police and the picketers dispersed.

There has been no further picketing or handbilling. On January 7, Fedco obtained a TRO in Superior Court limiting the number of picketers at the Pasadena and La Cienega stores, and prohibiting blocking of ingress and egress and other disturbances of the peace.

ACTION

We conclude that the Union violated Section 8(b)(4)(ii)(B) by engaging in picketing at a common situs with an object of disrupting the business relationships of a company with which it does not have a primary labor dispute. Although the Union may have complied with the Moore Dry Dock standards for common situs picketing,^[5] there is direct evidence of unlawful intent sufficient to prove an unlawful secondary boycott.

Primary picketing is privileged regardless of whether it causes injury to the

business of a neutral employer (e.g., where neutral employees refuse to cross primary picket line). Thus, Section 8(b)(4)(B) reflects "the dual congressional objective of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own."¹⁶¹ It is only where a union pickets or threatens to picket a neutral with a proscribed object of enmeshing the neutral in a controversy not its own that the union violates 8(b)(4)(B).

Ascertaining a union's motivation becomes difficult in cases involving a "common situs" where the primary and secondary employers are engaged in operations at the same location. In Moore Dry Dock, supra, the Board created several criteria to help resolve the question of whether a union has the proscribed motive of enmeshing neutral employers when it pickets locations where both the primary and secondary employer are present. Under that standard, common situs picketing generally is lawful if: (1) the picketing is strictly limited to times when the situs of the dispute is located on the neutral employer's premises; (2) at the time of the picketing the primary employer is engaged in its normal business at the site; (3) the picketing is limited to places reasonably close to the location of the situs of the dispute; and (4) the picketing discloses clearly that the dispute is with the primary employer.¹⁷¹

The Board and courts uniformly have held that picketing at a common situs presumptively violates Section 8(b)(4)(B) if any of the requirements of Moore Dry Dock are disregarded.¹⁸¹ However, compliance with the Moore Dry Dock standard does not necessarily privilege common situs picketing. Thus, the Board has held that the standard is evidentiary in nature, and is to be employed only in the absence of more direct evidence of the intent and purposes of the labor organization.¹⁹¹ Compliance with the Moore Dry Dock standard is not conclusive evidence that the picketing constitutes lawful primary activity if the "totality of a union's conduct in a given situation . . . disclose[s] a real purpose to enmesh neutrals in a dispute, despite literal compliance with the Moore Dry Dock standards."¹¹⁰¹ Evidence that shows that a "purposeful effort" was made to direct pressure at the neutrals working at a common situs proves an unlawful secondary object.¹¹¹¹

For example, the Board has held common situs picketing unlawful where statements by union representatives to neutrals occupying the premises revealed a secondary object. In Rollins Communications, the union was conducting common situs picketing in accordance with Moore Dry Dock standards.¹¹²¹ However, a union representative responded to an inquiry from the neutral general contractor with the statement that the pickets would be removed if the contractor agreed that the primary subcontractor would not work on the job until its employees were paid prevailing wages and benefits. The Board held that this statement demonstrated an unlawful object of picketing - to force a neutral to alter or modify its business relationship with the primary.¹¹³¹ Similarly, in Hylan Electric,¹¹⁴¹ the Board found picketing unlawful where a union representative stated that pickets would be removed to give the neutral general contractor an opportunity to call another subcontractor from a list of acceptable companies provided by the union.

We conclude that the picketing here -- on November 7-8, December 4, and December 19 -- was at least in part an attempt to pressure Fedco to alter its

business relationships. Fedco is a neutral employer with which the Union cannot have a primary labor dispute since it does not represent nor seek to represent Fedco's employees.^[15] Therefore, the Union's picketing was not privileged common situs picketing even assuming that the Union picketed only when ISS, Network, and UBM -- with which it claims to have primary disputes -- were at the site, the picket signs referred only to those employers, and the Union otherwise complied with the Moore Dry Dock standards.^[16]

The statements made by Union representatives to Fedco and, in handbills, to Fedco's customers indicate that the Union's object in picketing at store entrances was to disrupt Fedco's business and thereby pressure it to resume contractual relationships with the cancelled unionized contractors. Specifically, prior to the picketing, the Union made an oral "quid pro quo" threat, similar to that made in Rollins, that the Union would take action against Fedco unless it agreed to subcontract with the Union signatories, and made a direct threat in writing to do everything within its power, including picketing, to reverse the contract cancellations. The Union also posted a flyer on Fedco employee bulletin boards, describing the loss of jobs by Fedco janitors and directly appealing to neutral Fedco employees to make common cause with the Union to "save union jobs in the market industry." Finally, the Union distributed handbills, sometimes while picketing and sometimes without concurrent picketing,^[17] which identified Fedco as the party responsible for the janitorial employees' plight and requested that customers contact Fedco's president and tell him, in essence, to restore the subcontracts with the Union signatories. Although the Union handbills distributed on December 4 were directed almost exclusively at UBM, not Fedco, nothing in those handbills nor in the Union's conduct demonstrated that the Union was disassociating itself from its prior purpose of pressuring Fedco to cease doing business with the non-represented contractors. That purpose was again made clear with the Union's December 19 press release and the handbills distributed later that day.

Accordingly, the Region should issue complaint, absent settlement, alleging violations of Section 8(b) (4) (ii) (B).

B.J.K.

^[1] All dates hereafter are in 1997 unless noted otherwise.

^[2] The various Teamsters locals which represented Fedco's store employees responded by posting flyers asking their members to ignore the unsanctioned SEIU picketing.

^[3] The Region has contacted ISS and Network, but, in the absence of their cooperation, has been unable to determine whether there was a bona fide contractual dispute with the Union over payment of wages.

^[4] There was no picketing on November 24 or December 1.

[5] Sailors' Union of the Pacific, AFL (Moore Dry Dock Company), 92 NLRB 547 (1950).

[6] NLRB v. Denver Building and Construction Trades Council, 341 U.S. 675, 692 (1951).

[7] 92 NLRB at 549.

[8] See e.g., Machinists Local 889 (Freeman Constr. Co.), 120 NLRB 753 (1958); Retail Fruit & Vegetable Clerks' Union, Local 1017 (Crystal Palace Market), 116 NLRB 856, 858-859 (1956), enf'd. 249 F.2d 591 (9th Cir. 1957); NLRB v. Local Union No. 55, and Carpenters' District Council of Denver and Vicinity, 218 F.2d 226, 231 (10th Cir. 1954).

[9] NLRB v. International Hod Carriers, Building and Common Laborers Union of America, Local 1140, 285 F.2d 397 (8th Cir. 1960).

[10] Local No. 441, International Brotherhood of Electrical Workers (Rollins Communications), 222 NLRB 99 (1976), enf'd. 97 LRRM 3228 (D.C.Cir. 1977), on remand from 510 F.2d 1274 (1975), denying enf. to 208 NLRB 943 (1974). See also General Teamsters, Warehouse and Dairy Employees Union Local No. 126 (Ready Mixed Concrete), 200 NLRB 253, 254-55 (1972).

[11] Ready Mixed Concrete, supra, at 255.

[12] 222 NLRB at 99.

[13] 222 NLRB at 101. The Board has limited its ruling in Rollins by holding, in Local 453, International Brotherhood of Electrical Workers (Southern Sun Electric Corp.), 237 NLRB 829, 830 (1978), enf'd. 620 F.2d 170 (8th Cir. 1980), that there was no violation of 8(b)(4)(B) where, in response to a question by the neutral general contractor as to what it would take to have the union remove the pickets, a union representative replied that "it would take getting the Southern Sun electrical contractors off the job." However, Southern Sun is distinguishable in that: (1) the conversation in which the remark occurred there was initiated by the neutral, not the union, and the remark was a response to a direct question by the neutral; (2) the remark was informational and was not intended, nor understood, as a request for assistance; and (3) although the neutral took no action after the conversation, the union voluntarily terminated the picketing the same day. In any event, the Board's holding in Southern Sun does not disturb the principle that picketing in compliance with Moore Dry Dock standards is nevertheless unlawful if the totality of the union's conduct demonstrates an actual purpose of enmeshing neutrals in a dispute.

[14] Local 3, International Brotherhood of Electrical Workers (Hylan Electric Company, Inc.), 204 NLRB 193, 195 (1973).

[15] See Alaska Timber Corp., 271 NLRB 1291 (1984), enfd. in pertinent part 781 F.2d 919, 121 LRRM 2719 (D.C. Cir. 1986).

[16] [FOIA Exemption 5

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^[17] On those occasions where the Union merely distributed handbills, and did not patrol with placards or otherwise confront customers in a way that would constitute coercive "picketing," there was no violation of Section 8(b)(4)(B), which does not proscribe peaceful handbilling urging a consumer boycott of a neutral employer. See Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council, 485 U.S. 568, 128 LRRM 2001 (1988). However, the Union's statements in those handbills are relevant in determining the Union's object during incidents of picketing.